Supreme Court, U. S.
SEP 12 1944
CHARLES ELMORE CROPLEY

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 459

THOMAS CLYDE HELTON,

Petitioner,

vs.

THE UNITED STATES OF AMERICA.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

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To the Honorable Harlan F. Stone, Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

The petitioner, Thomas Clyde Helton, respectfully shows and represents, as follows:

I.

Summary Statement of the Matter Involved.

The petitioner, at the March Term, 1943, of the United States District Court for the Nashville Division of the Middle District of Tennessee (hereinafter referred to as the

"trial court") and on July 29, 1943, was indicted (R. 1-3), in a single count, for an alleged violation of that portion of Section 11 of the Selective Training and Service Act of 1940 (50 U. S. C. A., Appendix, Section 311), hereinafter sometimes referred to as "the Act" or "said Act", reading:

> "Any person * * * who shall knowingly hinder or interfere in any way by force and violence with the administration of this Act or the rules or regulations made pursuant thereto, * * * shall, upon conviction * * * be punished by imprisonment for not more than five years or a fine of not more than $10,000, or by both such fine and imprisonment * * *"

The indictment (R. 2-3), in substance, charged that the defendant did on or about June 10, 1943, knowingly, wilfully and unlawfully hinder, obstruct and interfere by force and violence with the administration of said Act, and the rules and regulations thereunder, in that he did wilfully and unlawfully assault, beat and wound Dr. Andrew J. Jamison, a duly appointed examining physician for Local Selective Service Board No. 1, Murfreesboro, Rutherford County, Tennessee, the defendant thereby intending to hinder, delay and interfere by force and violence with the administration, performance and conduct of the official duties of said Local Board and of said Dr. Jamison, as prescribed by said Act, and the rules and regulations thereunder, and the defendant knowing that said Dr. Jamison was such examining physician.

At the September Term, 1944 of said court, the petitioner, upon arraignment having plead not guilty to the single count of the indictment (R. 4), was put to trial and, at the conclusion of the respondent's case in chief, he moved the court to instruct or direct the jury to return a verdict in his favor of not guilty upon the ground that the government had not introduced evidence, and there was no evidence in

the record, upon which a verdict of guilty could or might be predicated (R. 6 and 40); which motion was overruled by the court and to which action of the court petitioner duly excepted (R. 6 and 40). At the conclusion of all the evidence in the case, petitioner renewed his motion for a directed verdict of not guilty, which motion was also overruled by the court, and petitioner duly excepted to this action of the court (R. 55). The jury found the petitioner guilty as charged in the indictment (R. 6-7 and 55), the petitioner seasonably filed his motion for a new trial (R. 7-8 and 56-57), said motion was overruled by the court (R. 9 and 57), petitioner duly excepted to this action of the court, and thereupon the court sentenced petitioner to four years imprisonment (R. 9 and 57). Petitioner seasonably filed in duplicate his notice of appeal to the United States Circuit Court of Appeals for the Sixth Circuit (R. 10-15, 57-58) (hereinafter referred to as "appellate court") and otherwise duly perfected his appeal to said court.

Said appeal was heard (R. 69) in said appellate court and resulted in an affirmance of the judgment of the trial court on July 17, 1944 (R. 69; Opinion of Appellate Court, R. 70-74). Petitioner filed his petition for rehearing (R. 74-80), which was denied on August 14, 1944 (R. 81).

As shown by the indictment (R. 2-3), and the evidence in the case (R. 24-26, 30-32, 35, 37, 39, 45-47, 53), the prosecution and conviction of the petitioner was predicated upon the fact that, on June 10, 1943, on the north side of the Public Square in Murfreesboro, Rutherford County, Tennessee, a personal difficulty occurred between petitioner and Dr. Andrew J. Jamison in which petitioner assaulted said Dr. Jamison. Dr. Andrew J. Jamison was one of the examining physicians of the aforesaid Selective Service Board No. 1 of Rutherford County, Tennessee, on and prior to December 23, 1940 (R. 20-21, 24), and remained such examining physician at all times down to the trial of this case (R. 24).

Petitioner is advised that, as a matter of law, to warrant the submission of this case to the jury, and the affirmance of the conviction of the petitioner herein, it was, and is necessary that there be sufficient substantial evidence to establish beyond a reasonable doubt the following facts:

(1) That said assault upon Dr. Jamison was caused by or grew out of Dr. Jamison's exercise or performance of his duties as a Selective Service examining physician.

(2) That petitioner committed said assault "knowingly," as provided in the Selective Training and Service Act of 1940; that is, with the deliberate purpose, or specific or actual intent, to hinder or interfere with the administration of said Act or the rules or regulations made pursuant thereto.

(3) That said assault caused some actual hindrance or interference with the administration of said Act or the rules or regulations made pursuant thereto, either by incapacitating Dr. Jamison from exercising or performing his duties as such examining physician, or by restraining him or some member of his Selective Service Board or other official or employee charged with such administration, by fear, from exercising his or their free judgment in the discharge and performance of his or their duties under said Act or rules or regulations, or by otherwise preventing him or them from performing such duties.

Therefore, since the "questions presented" by this petition, as hereinafter set forth, all relate, necessarily on the record in this case, directly or indirectly to the issue as to whether or not there was sufficient evidence adduced on the trial to warrant the submission of the question of petitioner's guilt to the jury and support the jury's verdict that the petitioner was guilty of the offense charged in the indictment, it is necessary, in order adequately to state the

"matter involved" as required by Rule 38(2) of this Court, briefly to review the evidence in the case, particularly in reference to the aforesaid propositions of fact (1), (2) and (3), as follows:

The evidence without substantial conflict shows the following facts:

Petitioner, 35 years of age at the time of trial (R. 41), and residing at Murfreesboro, Rutherford County, Tennessee, and subject to its jurisdiction (R. 20, 41), registered under the Selective Training and Service Act of 1940 with Local Selective Service Board No. 1 of Rutherford County, Tennessee, hereinafter sometimes referred to as "said Board" and as the "Local Board", in the first registration held under said Act in October, 1940 (R. 20, 41), was placed in Class I-A on December 5, 1940 (R. 20, 41-42), was called for physical examination and was examined or partially examined on December 23, 1940 by Dr. Andrew J. Jamison, one of the examining physicians of said Board in the absence of Dr. Murfree, the chief examining physician (R. 20-21, 24, 42).

Dr. Jamison examined petitioner in the "routine way", during the course of which petitioner stated to Dr. Jamison that he was extremely nervous and had been for several years, that he had had a heart attack or fainting spell a year or two before, had suffered a sunstroke several years previously, and also a nervous breakdown, for all of which Dr. Murfree had treated him, but that he did not know what his trouble or illnesses had been nor just what treatment Dr. Murfree had prescribed for him, and petitioner suggested that Dr. Murfree would have to be consulted about said matters. (R. 24, 27, 42).

Dr. Jamison examined petitioner's heart and told petitioner he found nothing wrong with his heart and found him fit for military service, and stated to petitioner, who

appeared to Dr. Jamison to be a nervous person, that the Army would or might be good for his nerves or nervous condition (R. 24, 27, 42). Dr. Jamison did not sign the report of this physical examination of petitioner and deferred completion of the examination and said report until Dr. Murfree's return, and later at Dr. Murfree's request consented to Dr. Murfree attending to the "whole physical examination" of petitioner (R. 24, 27, 42-43). Dr. Jamison never signed a report of his said examination on December 23, 1940 of petitioner, nor any other report on any other physical examination of petitioner (R. 21, 27).

After said occasion on December 23, 1940, Dr. Jamison at no time made any further physical examination of the petitioner, and was not thereafter called upon to make any such examination, and both Dr. Jamison and petitioner, the only witnesses on the subject, in substance testified that, after said date of December 23, 1940, Dr. Jamison in his capacity as examining physician had no further connection nor contacts whatsoever at any time with the petitioner, nor petitioner with him in relation to petitioner's draft status (R. 27-28, 43-44).

After Dr. Murfree's return (R. 22) and after Dr. Jamison consented as aforesaid to Dr. Murfree's making the "whole examination" of petitioner, Dr. Murfree signed the report of the physical examination of petitioner under date of January 28, 1941 and referred petitioner to Dr. C. R. Walton, a member of the Medical Advisory Board for said Local Board, with the suggestion that petitioner was suffering from or was subject to psychoneurosis (R. 21), and Dr. Walton examined petitioner and reported, under date of January 29, 1941, that petitioner was suffering from psychoneurosis hysteria (R. 21). Upon the basis of both Dr. Murfree's and Dr. Walton's reports, said Local Board on January 31, 1941 classified and placed petitioner in Class IV-F (R. 21, 23), in which classification petitioner

remained until June 12, 1942, when he was reclassified by said Local Board and placed in Class I-A upon the basis of another physical examination of him by Dr. Murfree made on June 5, 1942 (R. 21-23). Thereafter, petitioner was called for induction and was sent to the induction center at Fort Oglethorpe, Georgia, where he was reexamined and rejected on account of psychoneurosis, as shown by the Army examining officer's report (R. 21, 23). On the basis of said last mentioned report (R. 23), said Local Board on July 27, 1942 reclassified and returned petitioner to Class IV-F, in which classification he remained at all times down to the time of the trial herein (R. 21, 23).

The petitioner did not at any time seek any deferment or exemption from military service; he did not appeal from nor seek any review of any physical examination given him or any classification in which he was at any time placed by said Local Board (R. 21-23, 44); there is no evidence whatsoever that petitioner appealed to the aforesaid Medical Advisory Board nor that he was in any way dissatisfied with the result of his examination by Dr. Jamison on December 23, 1940, or by Dr. Murfree in January, 1941 and in June, 1942, but it affirmatively appears (R. 21) that petitioner was referred to Dr. Walton, a member of said Medical Advisory Board, on recommendation of Dr. Murfree; there is no evidence that petitioner at any time asked to be examined by any other doctor or that he at any time made any complaint or expressed or manifested any dissatisfaction as to any physical examination given him either by Dr. Jamison, Dr. Murfree or Dr. Walton, or that he ever made any complaint or expressed or manifested any dissatisfaction to his Local Board or to any one else in regard to any of the classifications in which he was at any time placed; and it affirmatively appears (R. 22-23) that he responded to every notice to appear for physical examination, his notice of induction and all other notices

from said Local Board calling for a response from him (R. 21-23, 44-45).

Petitioner not only did not in any way try to avoid military service but, on the contrary, volunteered for service in June, 1942 and was rejected on his physical examination (R. 45).

No evidence was adduced, and there is no evidence in the record, showing or tending to show that petitioner at any time whatsoever made any reference whatsoever to his examination or partial examination by Dr. Jamison on December 23, 1940, which, as hereinbefore stated and as here emphasized, was the only exercise of duty performed by Dr. Jamison as examining physician for said Board with respect to petitioner.

On June 10, 1943, two years, five months and eighteen days after Dr. Jamison's examination or partial examination of petitioner on December 23, 1940, he and petitioner met at a drug store on the public square in Murfreesboro, Tennessee, and the difficulty between them ensued (R. 24-26, 45-74).

In narrating what was said between them and was done just prior to and during said difficulty, Dr. Jamison in substance testified (R. 24-26) that he went into said drug store to have a prescription filled and, as he was leaving the store, he stopped at the soda fountain or counter to get a Coca Cola and noticed petitioner sitting on or leaning against one of the counter stools at or near the other end of the soda fountain, nearest the front door of the store; that he heard petitioner say to the soda fountain or counter girls who were behind the counter, "Do you know this man," and heard one of the girls say she did not; that petitioner then said, "This is the Doc," to which he made no reply; that he heard petitioner again say, "Why this is the Doc," to which he still made no reply; that, as he finished his Coca Cola and was about to leave

the store, petitioner walked back towards him but to his rear and said, "I've got it in for you"; that he made no reply to this last remark and, as he started towards the door of the store, petitioner said, "Did you hear what I said?"; that he told petitioner he did, but that he had just considered the source and had paid no attention to him; that he walked on out of the store and got into his car and was about to close the door of his car as petitioner came up; that he said to petitioner, "Clyde, go on, I don't want to have any trouble with you. You think I have been trying to put you in the Army for two years"; that petitioner then replied "Come on out and fight, you damn old son of a bitch"; and then Dr. Jamison described the difficulty that then ensued.

Petitioner in relating what was said between them and was done just prior to and during said difficulty, after stating he went into said drug store to get a sandwich and was not expecting to see or meet up with Dr. Jamison (R. 45), in substance testified (R. 46-47) that, when he saw Dr. Jamison at the soda fountain, he said to him, "Doctor, I want to talk to you about a matter," to which Dr. Jamison did not reply; that he said to Dr. Jamison again, "Doctor, I want to talk to you about a matter," to which he still made no reply; that, about that time Dr. Jamison started to leave the store and as he passed petitioner on the way out, he said to Dr. Jamison, "Doctor, did you hear what I said?"; that Dr. Jamison said, "Yes, but I just considered the source"; that, as he walked up to Dr. Jamison sitting in his car, Dr. Jamison said, "Go on, Clyde. You are mad at me because you think I have been trying to put you in the Army"; that he said, "No, Doctor, that is not what I want to see you about. My wife tells me you have been staring at her when she is in the drug store, and I want you to know I don't like it"; that Dr. Jamison replied, "That is a god damn lie," and

reached for the dash or glove compartment on the opposite side of his car; that he thought Dr. Jamison had a pistol or other weapon in the car and was trying to get it, and he grabbed Dr. Jamison and pulled him out of the car, and then the difficulty ensued; and that he grappled with Dr. Jamison a second time, after they had once been separated, when he saw Dr. Jamison start rapidly back towards his car and he thought Dr. Jamison was going back to get whatever weapon he had in the pocket of his car.

Neither of the soda fountain girls (R. 30-31, 31-32) could recall what was said between petitioner and Dr. Jamison in the drug store.

Petitioner also in substance testified (R. 45-46), in which he was corroborated by his wife (R. 51-52), that he knew that Dr. Jamison's reputation about women was bad; that he had heard Dr. Jamison was going with the witness, Maudie Pitts; that he and his wife had discussed between themselves Dr. Jamison's bad reputation as to women; that, on the night before the difficulty, his wife had told him that, while she was in said drug store the day before the difficulty, Dr. Jamison had come in the store, and stood and stared at her the entire time she was in the store; that this naturally made him angry at the time; and that, when he saw Dr. Jamison in the store on the day of the difficulty, he decided to talk to Dr. Jamison and let him know that he did not like his staring at his wife, but that he did not have in mind having a fight or difficulty with Dr. Jamison but simply to talk to Dr. Jamison and let him know he did not appreciate his conduct towards his wife.

Dr. Jamison testified (R. 26) that, in said encounter, he sustained a cut on the back of his head, which bled some; that his right knee was skinned and bruised, and the under side of his left arm, just above the elbow, was bruised; that one side of his face was bruised and both of his eyes were discolored to some extent for several days;

and that he drove his car home after the encounter, remained at home the next day, when several of his doctor friends called on him, and was back at his office and up town the next day.

Dr. Jamison did not testify or claim in his testimony, and no evidence was offered or adduced on the trial, proving or tending to prove, that Dr. Jamison was physically incapacitated from performing any of his duties as examining physician by reason of injuries sustained by him in said encounter, or that he was thereby intimidated or restrained by fear or otherwise in any degree from performing his said duties, or that he received or needed any medical attention or treatment whatsoever. Neither Dr. Jamison nor Mrs. McGhee, the chief clerk of said Local Board who testified in the case (R. 20-23), testified, and no evidence was offered or adduced on the trial, proving or tending to prove, that registrants were examined or called for physical examination between the time of the encounter with petitioner on June 10, 1943 and Dr. Jamison's return to his office on June 12, 1943, nor that Dr. Jamison's services as examining physician for said Board were needed or required between said dates or at any other time when he was unable to perform same on account of any injury received by him. No claim was made, and no evidence was offered or adduced on the trial, proving or tending to prove that any member of said Local Board, any examining physician or employee thereof, or any other person officially charged with the administration of the Act or the rules or regulations thereunder were restrained or intimidated by fear or otherwise, influenced, affected, or in anywise hindered or interfered with, in the performance of their duties in the administration of said Act or rules or regulations.

The appellate court, in affirming the judgment of the trial court (Opinion. R. 70-74), in substance held (1) that there was substantial evidence from which the jury was war-

ranted in finding that the aforesaid assault upon Dr. Jamison by petitioner on June 10, 1943, was caused by Dr. Jamison's exercise of his duties as a Selective Service physician (that is, by his aforesaid examination or partial examination of petitioner on December 23, 1940) and (2) that the assault by petitioner upon Dr. Jamison, growing out of his said exercise of duty, was—in and of itself, and without regard to whether or not petitioner intended at the time of said assault to hinder or interfere with the administration of said Act or rules or regulations, and in the absence of evidence proving or tending to prove that an actual hindrance or interference with such administration resulted from said assault—an interference by force and violence with the administration of the Act or the rules or regulations thereunder, the conclusions of the appellate court being stated in its Opinion (R. 73-74), as follows:

> "The jury did not believe appellant's story. They had the right to draw the conclusion that appellant was nursing a grudge against the doctor for what he had told him, on his first physical examination, to the effect that the Army would be a good thing for him, and that he was physically fit for military service. There was substantial evidence that he had made accusations that he was going to "get" the doctor; that he had remarked to another witness that the doctor was trying to force him into the Army; that just before the fight, he had threatened the doctor that he had it in for him; and, from the statements to the two police officers and the federal agent afterward, that he had committed the assault because of some peculiar feeling of vengeance arising out of the fact that the doctor had approved him for military service, and, as a Selective Service official, whose duties were to certify draftees as fit for military service, was still trying to subject him to service. Appellant's explanation about his anger over the doctor's looking at his wife, appears to have been considered by the jury as a fiction designed for the purpose of de-

fense and resulting in an attempt to discredit and besmirch Dr. Jamison and, incidentally, a young girl who was innocent of wrongdoing. As far as the evidence discloses, appellant had never mentioned this story to anyone until the trial, although he had told several parties, after the assault, that he wished he had killed the doctor because of the latter's efforts to place him in the Army. There was substantial evidence from which the jury could find that the assault was caused by Dr. Jamison's exercise of his duties as a Selective Service physician."

"An assault upon a member of such a Board, or one of its examining physicians, growing out of his exercise of duty, is an interference by force and violence with the administration of the Act. The orderly functioning of the Board could not continue if its members or physicians were restrained from exercising their free judgment by fear, and if they felt they would not be safe, in the exercise of their duties, from the attacks of those who became vengeful as a result of their official decisions. Moore v. United States, 128 F. (2d) 974 (C. C. A. 5); Burwell v. United States, 137 F. (2d) 155 (C. C. A. 4)."

The following evidence is the only evidence in the record upon which said conclusions of the appellate court, stated in the foregoing quotation, can be, and it is apparent therefrom that said conclusions were thereon, predicated, to-wit:

(A) Dr. Jamison's testimony on direct examination (R. 24) that after he examined or partially examined him, petitioner "seemed to be cold or less friendly or cordial towards me," when they met or passed on the street or in the barbershop or elsewhere about town and, again on cross-examination (R. 28), that he "thought" petitioner seemed "cooler" towards him. Dr. Jamison testified (R. 24) that he paid no particular attention to this apparent attitude of petitioner; that (R. 28) he saw petitioner on the streets and about town numerous times, between December 23, 1940 and June 10, 1943, and petitioner never threatened nor hit him nor said

anything to him to show that petitioner was mad or disgruntled with him. Dr. Jamison did not testify as to any statement by or conduct of petitioner during his examination of petitioner that evinced, and no evidence was offered or adduced proving or tending to prove, that petitioner during said examination manifested anger, disgruntlement or dissatisfaction in any way at or on account of anything that was said or that occurred during said examination, and petitioner in substance testified (R. 42) that, instead of making him angry or disgruntled, Dr. Jamison's statement (R. 24) to him to the effect that he found him fit for military service and that the Army would or might be good for him pleased and relieved him.

(B) The testimony (R. 35) of the witness, Maudie Pitts, that petitioner "one time before the difficulty" said to her: "I am going to get Dr. Jamison." Petitioner emphatically denied (R. 50) that he made said statement or that he at any time made threats of any kind against Dr. Jamison, and the interest of the witness Maudie Pitts is apparent from the evidence in the record as to the relationship shown to have existed between her and Dr. Jamison (R. 28-29, 36, 46, 49-50, 51).

(C) The statement (R. 38) of Dr. B. W. Rawlins, stipulated into the record, the material part of which is as follows:

> "In a casual conversation with a group of men in the Stones River Club, a social club in Murfreesboro, we were discussing various phases of the draft of men for the armed services. I heard Clyde Helton say that he was willing to go to the Army, did not feel that he was any better than anybody else, if they wanted him he would go, but that he did not feel that he should be 'railroaded' into the Army as Dr. Jamison was 'railroading' him.

"I cannot give dates. It may have been three weeks, three months, or six months before the fight between the two men, Clyde Helton and Dr. Jamison, involved in this case."

Petitioner's account (R. 48) as to what was said on said occasion was as follows:

"Dr. Rawlins is mistaken as to what he said I said over at the Stones River Club. The occasion Dr. Rawlins referred to occurred back in the winter of 1943, several months before June 10, 1943. I dropped by the Stones River Club where I am a member, about 10 o'clock one night, and went into the card room just about the time the card game broke up. Some of the players left, and some of them sat around a while. Dr. Rawlins was present. The talk got around to a discussion of the war and the draft. Somebody in the crowd asked Dr. Rawlins about a boy named Rush Taylor about whom there had been considerable talk about whether or not he was actually disabled for Army service, and Dr. Rawlins stated, as I remember, that he had examined and waited on Rush Taylor, and he knew Rush Taylor had an injury to his back and that, if he was taken to the Army, the Army would find out sooner or later that his back was injured. Dr. Rawlins also said that Dr. Jamison did not seem to think there was anything wrong with Rush Taylor and seemed to be trying to get him in the Army. I spoke up and said that I was in IV-F and did not suppose I would ever have to go to the Army, that I was not any better than anybody else and wanted to go if I was able to go if they wanted me, but that I would hate to be pushed into the Army by Dr. Jamison or anybody else if I was not able to go. I don't think I used the words 'railroaded.' I did not say Dr. Jamison was trying to railroad me into the Army or that Dr. Jamison 'was railroading' me into the Army."

Dr. Rawlins was not recalled or re-examined and no effort nor attempt to contradict petitioner was made, after petitioner gave his version of what was said on said occasion.

(D) Dr. Jamison's testimony (R. 25), already noted supra, to the effect that petitioner said to him in the drug store just before their difficulty or encounter: "I've got it in for you." As noted, supra, petitioner in effect denied (R. 46) making this statement.

(E) The testimony (R. 37-38, 52-53) of the police officers, Claud Vance and F. C. Lamb to the effect that, shortly after the difficulty or encounter between petitioner and Dr. Jamison, petitioner said, in response to a remark addressed to him by Claud Vance to the effect that he might have killed Dr. Jamison, in substance that he hoped he did kill Dr. Jamison and that Dr. Jamison had been trying to put him in the Army for the last two years. The witness also testified (R. 37-38, 53) that petitioner was highly excited and nervous at the time and also said that Dr. Jamison "had been meddling in his business." Petitioner in substance testified (R. 47-48) that, on this occasion, he was still very excited and nervous, and that he did not remember what was said between him and said officers nor that he said anything to them to the effect that Dr. Jamison had been trying to put him in the Army, but that, if he did say anything to that effect, he "must have been referring to what Dr. Jamison had said to me when I first walked up to his car, to the effect that I was mad at him because I thought he had been trying to put me in the Army, because I had no reason to think, and did not think, Dr. Jamison had been trying to put me in the Army" (R. 48).

(F) The testimony (R. 39) of W. E. Hopton, an agent of the Federal Bureau of Investigation, in relating an interview had with petitioner on the occasion petitioner was arraigned before the United States Commissioner, as follows:

> "I asked him why he had hit Dr. Andrew J. Jamison, and he said that Dr. Jamison had been trying to put

him into the Army. I asked him if Dr. Jamison had ever said anything to him about putting him in the Army, and he said that Dr. Jamison had not, but that several people had told him Dr. Jamison was trying to get him into the Army. I asked him who had told him that, and he said both Dr. B. W. Rawlins and Dr. Samuel L. Wiles, both of Murfreesboro, had told him that."

Petitioner testified (R. 39) in substance that he did not remember telling this witness that Dr. Jamison had been trying to put him into the Army but, if he did, he was referring to what Dr. Jamison had himself said to him, when he went up to Dr. Jamison's car on June 10, 1943, just before the start of their difficulty or encounter, to the effect that he was mad at Dr. Jamison because he thought Dr. Jamison had been trying to put him in the Army.

No evidence was offered or adduced on the trial proving or tending to prove that petitioner had ever previously been in any kind of trouble, no assault was made upon his reputation, and his good reputation for truth and veracity was testified to (R. 33-34) by five character witnesses offered in his behalf, the court expressly limiting the number of such witnesses to five.

II.

Jurisdiction.

The judgment of the appellate court, affirming petitioner's conviction, was entered July 17, 1944 (R. 69). Petitioner's petition for a rehearing in said court was filed August 3, 1944 (R. 74), within the time provided and required by the rules of said court, and was denied August 14, 1944 (R. 81). The jurisdiction of this court is invoked under section 240 of the Judicial Code, as amended by the Act of February 13, 1925 (28 U. S. C. A., Section 347(a)).

III.

The Questions Presented.

All the questions hereby presented relate directly or indirectly to the single issue as to whether or not there was sufficient substantial evidence adduced on the trial to warrant the submission to the jury of the question of defendant's guilt of the offense charged in the indictment, and to support the jury's verdict that the petitioner was guilty of said offense and the appellate court's decision affirming petitioner's conviction. Said questions are as follows:

1. As applied to this case, was it necessary or essential, as the appellate court apparently held it was (R. 73), to warrant or sustain a conviction of the petitioner of said offense, that the assault made by petitioner upon Dr. Jamison on June 10, 1943, be proved by substantial evidence to have been caused by, or to have grown out of, Dr. Jamison's exercise or performance of his duties as examining physician (that is, on the facts of this case, out of his examination or partial examination of petitioner on December 23, 1940) and, if so, was sufficient substantial evidence adduced on the trial to prove, and from which the jury could find, as held by the appellate court (R. 73), that said assault was caused by or grew out of such exercise and performance by Dr. Jamison of his duties as examining physician?

2. As applied to this case, was it necessary or essential, to warrant or sustain petitioner's conviction of said offense, that said assault upon Dr. Jamison be proved to have been committed by petitioner "knowingly", as provided in that portion of the Act under which he was indicted, that is, with the deliberate purpose or specific or actual intent to hinder or interfere with the administration of said Act or the rules or regulations thereunder, and was sufficient substantial

evidence adduced on the trial to prove, or to warrant the jury in finding, that said assault was so committed?

3. As applied to this case, was it necessary or essential, to warrant or sustain petitioner's conviction of said offense, that said assault be proved by substantial evidence to have caused some actual hindrance or interference with the administration of said Act or rules or regulations, either by incapacitating Dr. Jamison from exercising or performing his duties as such examining physician, or by restraining him or some member of his Selective Service Board or other official or employee, charged with such administration, by fear, from exercising his or their free judgment in the discharge and performance of his or their duties under said Act or rules or regulations, or by otherwise preventing him or them from performing such duties, and was sufficient substantial evidence adduced on the trial to prove, or to warrant the jury in finding, that said assault caused such actual hindrance or interference?

4. As held by the appellate court (R. 74), is an assault upon an examining physician of a local Selective Service Board, growing out of his exercise of duty, in and of itself and without regard to the intent with which it was committed and without regard to whether or not any such actual hindrance or interference is proved by substantial evidence to have been caused by such assault, an interference by force and violence with the administration of said Act, within the meaning and purport of that portion, quoted supra, of said Act under which petitioner was indicted and convicted?

5. Was sufficient substantial evidence adduced on the trial to warrant and to sustain the petitioner's conviction?

IV.

Reasons Relied on for the Allowance of the Writ.

(1) The appellate court in effect held in this case (R. 73-74) (a) that there was substantial evidence from which the jury was warranted in finding that petitioner's assault upon Dr. Jamison was caused by Dr. Jamison's exercise of his duties as a Selective Service physician and (b) that an assault upon an examining physician or, for that matter, upon a member of a local Selective Service Board, growing out of his exercise of duty—in and of itself and without regard to the intent with which it is committed and without regard to whether or not any actual hindrance or interference with the administration thereof is proved by substantial evidence to have been caused by such assault—is an interference by force and violence with the administration of the Selective Training and Service Act of 1940 or the rules or regulations thereunder, within the meaning and purview of that portion, quoted supra at the beginning of this petition, of Section 11 of said Act (50 U. S. C. A., Appendix, Section 311) for the violation of which petitioner was indicted and convicted.

The appellate court in its opinion did not define, nor consider the significance of the word "knowingly" appearing in said portion of said Section 11, and apparently considered that said word did not require, in order to prove the commission of or to sustain a conviction for an offense thereunder, that said assault be proved, by substantial evidence, to have been committed with the deliberate purpose or specific or actual intent to hinder or interfere with the administration of said Act or the rules or regulations thereunder.

As noted above, the appellate court, impliedly at least, also in effect held that it was not necessary, in order to war-

rant or sustain a conviction for said offense, that there be substantial evidence proving such actual hindrance or interference.

(2) This court has not as yet, so far as petitioner is advised, construed said portion of Section 11 of said Act, nor reviewed a conviction thereunder.

(3) Millions of servicemen have been, and many others in the future will probably be, selected and inducted, under said Act, into the armed services of the United States by the thousands of Local Service Boards throughout the United States; the general public need of an authoritative and elucidating decision by this court construing the aforesaid portion of Section 11 of said Act is apparent; and such decision is of great importance to, and is needed for the guidance and instruction of, such Local Boards and others charged with the administration of said Act, servicemen, registrants and others who in the future will become subject to said Act, the legal profession, trial courts and the Circuit Courts of Appeal.

(4) The appellate court thus has decided, and this case involves, important questions of federal law which have not been, but should be, settled by this Court.

V.

Prayer for Writ.

Wherefore, your petitioner presents to this court, and files herewith as an exhibit hereto, a duly certified transcript of the entire record in this case, as the same appears in the United States Circuit Court of Appeals for the Sixth Circuit, and prays that a writ of certiorari issue to said Court to review the judgment affirming defendant's con-

viction in the trial court, entered in said court in this case on July 17, 1944, that said judgment of said Court be reversed, and for such other and further relief in the premises as to this Court may seem just and proper.

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